

Message Text

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ACTION DLOS-09

INFO OCT-01 ISO-00 OIC-02 AF-10 ARA-14 EA-12 EUR-12
NEA-10 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-04
SOE-02 DOE-15 FMC-02 TRSE-00 H-02 INR-10 INT-05
IO-14 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02 OES-07
OMB-01 PA-02 PM-05 SP-02 SS-15 ICA-20 /213 W
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P 271033Z APR 78
FM USMISSION GENEVA
TO SECSTATE WASHDC PRIORITY 8909
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
USIS/USEC BRUSSELS
AMEMBASSY COPENHAGEN
AMEMBASSY DUBLIN
AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY THE HAGUE

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E.O. 11652: N/A
TAGS: PLOS
SUBJECT: LOS - STATEMENT BY CHAIRMAN OF DANISH DELEGATION
ON BEHALF OF THE EC NINE ON TRANSFER OF TECHNOLOGY

1. THERE FOLLOWS THE TEXT OF THE STATEMENT MADE ON APRIL
14 IN NEGOTIATING GROUP ONE BY THE AMBASSADOR VILLADSEN OF
DENMARK ON BEHALF OF EC NINE ON THE ISSUE OF TRANSFER OF
TECHNOLOGY.

2. BEGIN TEXT:

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MR. CHAIRMAN,

SPEAKING ON BEHALF OF THE NINE MEMBER STATES OF THE
EUROPEAN ECONOMIC COMMUNITY I HAVE THE HONOUR TO MAKE THE
FOLLOWING STATEMENT ON ART. 151 AND RELATED ISSUES:

(1). IT WOULD IN OUR OPINION FACILITATE OUR DISCUSSION OF

THE MATTER AT HAND AND HELP TO CLARIFY THE NEGOTIATING TEXT IF IT WERE AGREED THAT ART. 151 SHOULD ONLY DEAL WITH THE SYSTEM OF EXPLORATION AND EXPLOITATION PROPER. THIS MEANS THAT THE HEADING SHOULD BE CHANGED ACCORDINGLY AND THAT THE PARAGRAPHS DEALING WITH OTHER SUBJECT-MATTERS, THAT IS PARA 7, 8 AND 9, SHOULD BE CONSIDERED TOGETHER WITH THE MAIN PROVISIONS ON THESE MATTERS.

(2). REGARDING THE SYSTEM OF EXPLORATION AND EXPLOITATION ITSELF WE CONTINUE TO BELIEVE THAT A SYSTEM WHICH GIVES BOTH TO THE ENTERPRISE AND TO STATES, STATE ENTERPRISES AND JURIDICAL OR NATURAL PERSONS ASSURED ACCESS TO ACTIVITIES IN THE AREA ON AN EQUAL FOOTING WOULD BE A BALANCED OUTCOME OF OUR NEGOTIATIONS. THIS SO-CALLED PARALLEL OR DUAL SYSTEM IS IN OUR VIEW A REASONABLE COMPROMISE.

(3). THE PRESENT TEXT OF ARTICLE 151 DOES NOT SEEM TO REFLECT CLEARLY ENOUGH THE PARALLEL SYSTEM. THERE ARE IN PARAGRAPHS 1, 2 AND 3 EXPRESSIONS WHICH SEEM TO DISTORT THE PARALLEL SYSTEM. I REFER TO THE TERMS "ACTIVITIES CARRIED OUT BY THE AUTHORITY", "ON THE AUTHORITY'S BEHALF", AND "IN ASSOCIATION WITH THE AUTHORITY".

(4). WE MUST FURTHERMORE STRESS THAT THE NEW IDEA WHICH HAS BEEN INTRODUCED IN PARA 2 (II), I.E. THE IDEA THAT UNCLASSIFIED

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ACCESS FOR STATES, STATE ENTERPRISES, ETC. TO CARRY OUT ACTIVITIES IN THE AREA SHOULD BE CONDITIONAL UPON AN UNDERTAKING TO CONTRIBUTE TO THE TECHNOLOGICAL CAPABILITY, FINANCIAL AND OTHER RESOURCES NECESSARY TO ENABLE THE AUTHORITY TO FULFILL ITS FUNCTIONS UNDER PARAGRAPH 1, IN OUR OPINION IS CONTRARY TO THE CONCEPT OF THE PARALLEL SYSTEM. IN PRACTICE IT IS LIKELY TO LEAD TO A SITUATION IN WHICH THE RESOURCES OF THE AREA WILL NOT BE EXPLOITED FOR THE BENEFIT OF ALL MANKIND. THIS PROVISION IN ART. 151 AND RELATED PROVISIONS IN ANNEX II DISREGARD THE LEGITIMATE INTERESTS OF THE HOLDERS AND SUPPLIERS OF TECHNOLOGY AND PRESUPPOSE THAT THE CONTRACTORS ARE ALWAYS THE OWNERS OF THE REQUIRED TECHNOLOGY. THE CONTRACTORS WILL, HOWEVER, IN MANY CASES BE USING TECHNOLOGY UNDER LICENSE FROM OTHERS AND WILL NOT UNDER THE TERMS OF SUCH LICENSES BE ALLOWED TO TRANSFER THE TECHNOLOGY TO THE AUTHORITY AND ENTERPRISE AS ENVISAGED IN THE SAID PROVISIONS. TRANSFER OF TECHNOLOGY TO THE AUTHORITY AND THE ENTERPRISE SHOULD NOT BE MADE A CONDITION FOR OBTAINING A CONTRACT.

(5). HAVING SAID THIS, MR. PRESIDENT, LET ME IN THE SAME

BREATH MAKE IT VERY CLEAR THAT THE COUNTRIES FOR WHOM I
SPEAK ARE READY TO CO-OPERATE IN ORDER TO FACILITATE THE
ACQUISITION BY THE ENTERPRISE OF THE NECESSARY
TECHNOLOGY. TO THAT EFFECT WE SHOULD LIKE TO OFFER THE
FOLLOWING SUGGESTIONS: EACH CONTRACTOR SHOULD UNDERTAKE
TO MAKE AVAILABLE TO THE ENTERPRISE A GENERAL DESCRIPTION
OF THE EQUIPMENT AND METHODS TO BE USED IN THE NON-
RESERVED AREA. IN ADDITION THE CONTRACTOR SHOULD UNDER-
TAKE - UPON REQUEST BY THE ENTERPRISE - (A) TO NEGOTIATE
ARRANGEMENTS UNDER WHICH THE TECHNOLOGY WHICH IS TO BE
USED BY THE CONTRACTOR AND WHICH THE CONTRACTOR HAS THE
RIGHT TO TRANSFER IS MADE AVAILABLE TO THE ENTERPRISE,
AND (B) TO FACILITATE, TO THE GREATEST EXTENT FEASIBLE,
THE ACQUISITION BY THE ENTERPRISE OF TECHNOLOGY WHICH IS
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TO BE USED BY THE CONTRACTOR AND WHICH THE CONTRACTOR

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DOES NOT HAVE THE RIGHT TO TRANSFER. THE REQUEST BY THE ENTERPRISE SHOULD IN OUR VIEW BE MADE WITHIN A CERTAIN TIME, SAY 2 YEARS, AFTER THE CONCLUSION OF THE CONTRACT IN ORDER NOT TO MAKE THE CONTRACTOR SUBJECT TO AN UNCERTAIN SITUATION FOR TOO LONG. THE TRANSFER AS WELL AS THE ACQUISITION OF TECHNOLOGY SHOULD BE UNDER LICENSE - AS ALREADY ENVISAGED IN THE ICNT, ANNEX II - AND ON COMMERCIAL TERMS AND CONDITIONS.

(6). IN ORDER TO ENSURE THAT THE NEGOTIATIONS ARE CONDUCTED IN GOOD FAITH AND TO ASSIST THE PARTIES IN REACHING AGREEMENT, WE COULD ACCEPT THAT IF NEGOTIATIONS UNCLASSIFIED

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ARE NOT CONCLUDED WITHIN A REASONABLE TIME, EITHER PARTY MAY REFER ANY MATTER ARISING IN THE NEGOTIATIONS TO A CONCILIATION PROCEDURE. IT SHOULD IN THAT CONNECTION BE STIPULATED THAT THE CONCILIATION COMMISSION IS TO MAKE ITS RECOMMENDATIONS TO THE ENTERPRISE AND THE CONTRACTOR WITHIN A SPECIFIED SHORT PERIOD OF TIME. THE RECOMMENDATIONS OF THE COMMISSION SHOULD FORM THE BASIS FOR FURTHER NEGOTIATIONS BETWEEN THE PARTIES.

WHATEVER THE OUTCOME OF SUCH NEGOTIATIONS MAY BE, THE CONTRACT OF EXPLORATION AND EXPLOITATION SHOULD NOT BE AFFECTED.

(7). I HOPE, MR. CHAIRMAN, BY THIS STATEMENT TO HAVE ANSWERED SOME OF THE QUESTIONS PREVIOUSLY PUT AS TO WHAT THE MEMBER STATES OF THE EEC PROPOSE AS AN ALTERNATIVE TO THE LAST PART OF ARTICLE 151 PARA 2 (II), WHICH WE WANT DELETED. WE SHALL BE LISTENING WITH INTEREST TO COMMENTS MADE ON THE THOUGHTS HERE EXPRESSED AND ARE PREPARED TO WORK WITH OTHERS TOWARD A SOLUTION ACCEPTABLE TO ALL. END TEXT. RICHARDSON

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